Supreme Court of the United States.

FREDERICK WEYERHAUSER, F. C. A. DENKMANN, WILLIAM J. YOUNG, ET AL.,

Plaintiffs in Error,

VERSUS

THE STATE OF MINNESOTA,

Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF FOR DEFENDANT IN ERROR

Statement of the Case.

The County of Itasca, the largest timber-bearing county in Minnesota, was organized in 1891, when it secured its first full complement of officers. Prior to that time the greater portion of the lands in the county had been acquired by lumbermen of the northwest, who still own the same. Before the organization of the county, these lands had been assessed for taxation by the officers of the county to which Itasca County had been attached for judicial purposes.

In 1893 the Legislature of Minnesota appointed an Investigating Committee, which, after exhaustive re-

search and the taking of a large amount of testimony, reported that there had been gross fraud perpetrated in the assessment of Itasca County timber lands, and the report of this committee resulted in the enactment of chapter 151 of the General Laws of 1893.

Some time prior to January, 1894, acting under the provisions of said chapter, the Governor appointed a competent citizen of Minnesota, a non-resident of Itasca County,to ascertain the character, location, value and ownership of the real and personal property of said county which he might find to have been under-assessed or under-valued, and such citizen having duly qualified, at once proceeded to examine and report upon the subject and to prepare duplicate lists of such lands in the manner prescribed by said chapter. Prior to January 1st, 1894, these duplicate lists were filed with the State Auditor and with the County Auditor of Itasca County.

Since October 6th, 1893, plaintiffs in error have been the owners of a large number of pieces of real estate situated in said county and prior to that date, while other individuals owned the same, the lands were assessed for each of the years 1888 to 1893, inclusive, pursuant to the provisions of the general tax laws of Minnesota, and the taxes for each of said years were, before the same became delinquent, paid by the owners of the land. In the duplicate lists returned as aforesaid by the "special assessor," all of the lands so owned by plaintiffs in error were returned as under-valued for each of said years from 1888 to 1893, inclusive, and were entered by the County Auditor upon the real estate assessment books of said county for the year 1894, and were assessed by the assessors of the county

at the respective values shown by said lists and entered by the County Auditor upon the assessment and tax books for each of the said years from 1888 to 1893, inclusive, and were by him assessed at the new valuation ascertained as aforesaid.

The arrearages of taxes found due by reason of said new valuation were extended upon the assessment books. The owners of the land refused to pay these additional taxes assessed for the years stated, whereupon, said sums remaining unpaid on the first Monday in January, 1896, the usual proceedings were instituted to enforce collection of the same by judgment and sale of the property against which the taxes were assessed, as provided by the laws of Minnesota in the case of delinquent real estate taxes.

Plaintiffs in error answered and objected to the payment of such back taxes upon the ground that Chapter 151, Laws of 1893, under which these taxes had been levied, was unconstitutional.

At the trial in the District Court of said county, the proceedings were by complaint in the form of the published delinquent tax list to enforce the collection of taxes for the year 1894 remaining delinquent and unpaid on the first Monday in January, 1896, together with back taxes assessed against these lands under the act of 1893.

The proceedings to enforce collection of the taxes in dispute here, were taxen as prescribed by the Act of 1893 and the tax laws of Minnesota, the delinquent tax list being published together with the proper summons or notice to owners to appear, answer and defend.

The trial court found that such revaluation, and the col-

lection and enforcement proceedings of 1896 were all in accordance with the provisions of the Act of 1893, and that such taxes would be a legal charge against said lands and collection could be enforced as aforesaid, if said law was constitutional, which the trial court held it was not, and judgment was ordered entered that said lands be discharged from all liability for taxes claimed under the Act of 1893. The case was thereupon certified to the Supreme Court of Minnesota, and the trial court was there reversed *(State vs. Weyerhaueser,* 68 Minn., 353*)*, the case being remanded to the District Court, where judgment was entered against the lands for the amount of the undervaluation taxes claimed by the State. Whereupon said judgment was certified to the Supreme Court of the State and was by said Supreme Court affirmed *(State vs. Weyerhaueser, 72 Minn., 519);* and from that judgment the case comes here upon writ of error.

ARGUMENT.

No dispute has ever been made as to the actual value of the lands in controversy, nor has it ever been disputed that these lands had been grossly undervalued by the assessing officers during the years in question, nor that the valuation returned by the special assessor under the Act of 1893 was other than just and true, nor that these lands had not paid their just proportion of the public debt. The regularity of procedure under the act in question is not disputed.

The value returned by the special assessor was adopted by the assessor of Itasca County in the regular assessment for the year 1894 and the Board of Equalization of the county passed upon the same and that valuation was used in subsequent proceedings in extending the taxes for 1894 and for the years wherein the taxes are in dispute.

Plaintiffs in error failed to take action, at the time provided by law, to have this assessment corrected if the valuation was not just and true. They were bound to know of the existence of the 1893 law which was in force at the time the lands were purchased by the present owners in September, 1893, and they had an opportunity to be heard before the 1894 Board of Equalization upon this question of valuation, as well as an opportunity to try the entire question of valuation before the District Court when this cause was instituted.

Where there are no Federal inquiries involved this court will follow the decision of the State courts as

to the construction and validity of the statute. The decision of the State court is conclusive upon this court in any question raised as to whether the mode of assessing certain classes of property is authorized by the State Constitution; and (1) that the Act of 1893 does not conflict with the State Constitution, (2) that it in fact provides due notice to plaintiffs in error and an opportunity to be heard in a court of law before final judgment and sale, and (3) that there has been a substantial compliance with the statutes, is thus on principal settled adversely to plaintiffs in error by the decision of the State Supreme Court in *State vs. Weyerhaueser,* 68 Minn. 353; do. 72 Minn., 519.

Hager vs. Reclamation, 111 U. S. 704.
Minnesota vs. Winona, 159 U. S. 533.
Bailey vs. McGuire, 22 Wall., 217.
R. R. Co. vs. Backus, 154 U. S. 421.

The opportunity to appear before the equalizing boards and the published notice and opportunity to appear and try all questions involved, before the District Court prior to judgment was sufficient. There has been equality and uniformity of taxation and due notice to the owners, which applied to tax proceedings, constitutes "due process of law." There has consequently been a substantial compliance with the constitutional method of taxation.

The case of *Winona vs. Minnesota, 40 Minn., 512,* arose under Section 113, Chapter 11, General Statutes 1878, as amended by Laws 1881, Chapter 5, Section 1, providing for assessing taxes upon property for past years in which such taxes had not been assessed. The

Minnesota Supreme Court there said, and quoted the same with approval in *State vs. Weyerhaueser, supra:*

"Counsel seems to proceed upon what we consider two false assumptions, to-wit.: First, that in proceedings in the exercise of the taxing power the property owner is entitled to notice and to be heard in each preliminary step in the proceedings *pari passu* with their progress; and, second, that under the tax law, General Statutes 1878, Chap. 11, Secs. 75, 79, the defenses which he may interpose by answer, when the State applies for judgment, are so restricted as not to include all the objections which go to the merits of the proceedings. Where, as in the present case, the tax is levied on property not specifically, but according to its value, to be ascertained by some person appointed for that purpose, undoubtedly a party is entitled to notice and an opportunity to be heard; but we know of no case where it was ever held that a party was entitled to notice of, and to be heard in, each step in tax proceedings as it is taken. We doubt whether any tax law ever provided for any such thing.

"The principle running through all the cases is that a law does not infringe upon the constitutional provision under consideration if the property owner has an opportunity to question the validity or amount of the tax either before that amount is determined, or in subsequent proceedings for its enforcement. Whenever by law a tax is imposed upon property, and those laws provide for a mode of confirming or contesting it in the ordinary courts of justice, with such notice to the person or such proceeding in regard to the property as is appropriate to the nature of the case,

the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law. *Davidson vs. New Orleans,* 96 U. S. 97; *Hagar vs. Reclamation,* 111 U. S. 701.

"The right is fully given under the sections of the tax law already referred to. Within twenty days after the last publication of the delinquent list any person may, by answer, interpose any defense or objection he may have to the tax. He may set up as a defense that the tax is void for want of authority to levy it, or that it was partially, unfairly, or unequally assessed. *Board vs. Nettleton,* 22 Minn., 356. He may set up as a defense *pro tanto* that a part of a tax has not been remitted, as required by some statutes. *Board vs. Jessup,* 22 Minn. 552. That the land is exempt, or that the tax has been paid. *County vs. St. Paul,* 27 Minn. 109. That there was no authority to levy the tax, *or that the special facts authorizing the insertion of taxes for past years in the list did not exist,* or any omissions in the proceedings prior to filing the list, resulting to his prejudice. *County vs. Barber,* 31 Minn. 256.

"*The filing of the list* is the institution of an action against each tract of land described in it, for the recovery of the taxes appearing in the list against such tract, and *tenders an issue on every fact necessary to the validity of such taxes. Chauncey vs. Wass.,* 35 Minn. 1."

In affirming the *Winona* case, this court said:

"Questions of this kind have been repeatedly before this court, and the rule in respect thereto often declared. That rule is that a law authorizing the imposition of a tax or assessment upon

property according to its value does not infringe that provision of the Fourteenth amendment to the Constitution, which declares no State shall deprive any person of property without due process of law, if the owner has an opportunity to question the validity or the amount of it, either before that amount is determined or in subsequent proceedings for its collection. *McMillen vs. Anderson,* 95 U. S. 37; *Davidson vs. New Orleans,* 96 U. S. 97; *Hagar vs. Reclamation,* 111 U. S. 701; *Spencer vs. Merchant,* 125 U. S. 345; *Palmer vs. McMahon,* 133 U. S. 660; *Lent vs. Tillson,* 140 U. S. 136; *Pittsburg vs. Backus,* 154 U. S. 421. That the notice is not personal, but by publication is not sufficient to vitiate it. Where, as here, the statute prescribed the court in which and the time at which the various steps in the collection proceedings shall be taken, a notice by publication to all parties interested to appear and defend is suitable, and one that sufficiently answers the demand of due process of law. *State Railroad Tax Cases,* 92 U. S. 575, 609; *Hagar vs. Reclamation,* 111 U. S. 701, 710; *Kentucky Railroad Tax Cases,* 115 U. S. 321; *Lent vs. Tillson,* 140 U. S. 316, 328; *Pittsburgh vs. Backus, supra.* It cannot be doubted, under these various authorities, that in respect to the collection of these taxes ample provision is made for notice, and, therefore, that it cannot be adjudged that the owner is, for want thereof, deprived of his property, without due process of law. * * * The legislature can provide for collecting back taxes on real property without making a like provision with respect to back taxes on personal property. * * * Of the validity of a statute providing generally for subjecting to taxation lands which

> have improperly escaped taxation in prior years, there can be no serious doubt. (Page 529.) * * * The difference between the two modes as assessed may be stated thus: In the one case there is an assessment by one officer with a right to review his action; in the other there is an assessment by a different officer and no provision for a review except as the matter comes before the court in the proceedings for the collection of taxes. But there is nothing in this difference to affect the constitutional right of a party."
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> *Winona vs. Minnesota,* 159 U. S. 537, 538.

In the Winona case just cited this court had occasion to consider the provisions of the Minnesota laws which insure to plaintiffs in error the right and opportunity to appear and defend against the collection of the taxes here in question, which provisions are to be found in Sections 1584-1589, Gen. Stat. Minn. 1894.

A single hearing or opportunity to be heard is all that "due process of law" requires.

R. R. Co. vs. Backus, 154 U. S. 426.

Where the assessor discovers that property has been omitted from the roll, he may put it on without giving notice.

Wabash vs. Johnson, 108 Ill. 11.

It is true that most of the decisions upon this question of reassessing property omitted from assessment and taxation have been made with reference to cases where the omission has been entire and not partial, as in the case at bar; but we contend that the distinction is one of *degree* only. If property worth one hundred dollars has been assessed on a valuation of one

dollar it is the *value* of the property as well as the description of the property which has been omitted from assessment and taxation. The Law of 1893 operated more perfectly to secure the collection of these back taxes and it operated to make the lands bear their just share of the public burden and no more.

We will here discuss the *second* proposition advanced by counsel in their brief, and we contend that:

The law does not attempt to grant a new trial of a judicial controversey previously tried and determined; and except that notice is required sometime prior to final judgment, the assessor's determination of valuation for purposes of taxation is not to be considered with relation to results which follow from the rendition or satisfaction of a judgment in an ordinary civil action. Where the assessor does not act in conformity with the law his action is subject to review. Revaluation is not a collateral attack on a former valuation, nor is this attempt of the legislature to collect the balance of its claim a collateral attack, if the balance is found to exist.

"It has been repeatedly decided by this court that the proceedings to raise the public revenue by levying and collecting taxes are *not necessarily judicial,* and that 'due process of law' as applied to

that subject does not imply or require the right to such notice and hearing as are considered to be essential to the validity of proceedings and judgments of judicial tribunals. * * * The valuation of railroad property under that act and the assessment of the taxes thereon are not final in the sense that they constitute a charge upon the property subject to the tax or a liability fixed upon the corporation owning it. That result can be attained and the tax actually collected only by suit as provided * * * in the statute. * * *

"There is nothing in the constitution of Kentucky that requires taxes to be levied by a uniform method upon all descriptions of property. The whole matter is left to the discretion of the legislative power, and there is nothing to forbid the classification of property for purposes of taxation and the valuation of different classes by different methods."

Kentucky R. R. Tax Cases, 115 U. S. 331.

To the same effect *State Railroad Tax Cases,* 92 U. S. 575:

"The nation from which we inherit the phrase, 'due process of law,' has never relied upon the courts of justice for the collection of her taxes."

McMillan vs. Anderson, 95 U. S. 41.
Palmer vs. McMahon, 133 U. S. 669.

"The mode of assessing taxes in the states by the federal government, and by all governments, is necessarily summary that it may be speedy and effectual. By summary is not meant arbitrary or unequal or illegal. It must, under our constitution, be lawfully done. But that does not mean, nor does the phrase, 'due process of law,' mean by judicial proceeding."

McMillan vs. Anderson, supra.
Davidson vs. New Orleans, 96 U. S. 102.

"Wherever by the laws of a state or by state authority a tax assessment, servitude or other burden is imposed upon property for the public use whether it be for the whole state or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed in the ordinary courts of justice with such notice to the person or such proceedings in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, *however obnoxious it may be to other objections.* It may violate some provision of the state constitution against unequal taxation, but the federal constitution imposes no restraint on the states in that regard. * * * It is said that the plaintiff's property had previously been assessed for the same purpose and the assessment paid. *If this be meant to deny the right of the state to tax or assess property twice for the same purpose we know of no provision of the federal constitution which forbids this or which forbids unequal taxation by the state.*"

Davidson vs. New Orleans, 96 U. S. 104-106.

"The levy of taxes *is not a judicial function,* and by the theory of our English origin is exclusively legislative."

State R. R. Tax Cases, 92 U. S. 615.
Heine vs. Levy Commissioners, 19 Wal. 660.

"The omission of the taxing officers of the state in previous years to assess this property cannot

control the duty imposed by law upon their successors or the power of the legislature. * * *"

R. R. Co. vs. Denis, 116 U. S. 670.

"The extent to which the power of taxation of the state should be exercised, the subjects upon which it should be exercised and the mode in which it should be exercised, are all equally within the discretion of the legislature except as restrained by its own constitution and that of the United States."

Hagar vs. Reclamation, 111 U. S. 707.
Lane Co. vs. Oregon, 7 Wal. 71.
Foreign Held Bond Case, 15 Wall. 300.

"Where life and liberty are involved, due process requires that there be a regular course of judicial proceedings which imply that the party to be affected shall have notice and an opportunity to be heard; so also where the title or possession of property is involved. *But where the taking of property is in the enforcement of a tax the proceeding is necessarily less formal,* and whether notice to him is at all necessary may depend upon the character of the tax and the manner in which the amount is determinable."

Hager vs. Rec. 111 U. S. 708.

"The power to tax belongs exclusively to the legislative branch of the government. * * * The imposition of taxes is in its nature *administrative and not judicial,* but assessors exercise *quasi judicial powers* in arriving at the value."

Palmer vs. McMahon, 133 U. S. 669.

When the statutes provide a board for the correction of errors and irregularities of assessors in the assess-

ment of property * * * "Their action is judicial in character and their judgments in cases within their jurisdiction are not open to collateral attack."

Stanley vs. Supervisors, 121 U. S. 550.

This was said in a case where a party feeling himself aggrieved by reason of alleged over-valuation did not resort to the tribunal created by statute for the correction of the errors in the assessment, and it was held that he could not maintain an action at law to recover the excess of the taxes paid beyond what should have been levied on a just valuation.

But the latest utterance of the court, we think, upon this question is found in *Palmer vs. McMahon,* 133, U. S. 699, quoted above, where it is said that the action of the assessor is *quasi judicial* in its character.

Gross over-valuation or gross under-valuation, that is to say, a disregard of the constitutional provisions against unequal taxation gives ground for attacking this *quasi* judicial determination.

Cummings vs. Nat. Bank, 101 U. S. 153.

> "Tax proceedings are not in the strict sense judicial, but they are *quasi judicial,* and as they have the effect of a judgment, the reasons which require notice of judicial proceedings are always present when the conclusive steps are to be taken."
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> *Cooley on Taxation,* sec. 266.

THE VALUATION OF LAND FOR PURPOSES OF TAXATION IS NOT A CONCLUSIVE STEP IN THE TAX PROCEEDINGS; consequently no notice is required of the proceedings prior to the valuation, or, in

fact, at any particular time during the proceedings except that it must be given prior to final judgment.

Where the assessor does not act in compilance with the statute, his action is not judicial and his decision can be reviewed collaterally.

Hassan vs. Rochester, 67 N. Y. 528.

This was a case where certain provisions of the city charter were to the effect that property exempted from taxation by the general laws of the state might be assessed and taxed for local improvements. The city council by ordinance ordered certain lots within certain limits to be assessed for local improvements. The assessor omitted certain lots belonging to the state within the prescribed limits and imposed the whole assessment upon the owners of other lots. In an action to restrain collection of the taxes, it was held that the assessment was illegal and void, that the assessor in failing to comply with the ordinance and with the requirements of the statute did not act judicially and that the assessor's decision could be reviewed collaterally. The council in passing the ordinance prescribing the limits to be assessed adjudged that all parts thereof were benefited and bound the assessors to assume that the lands omitted derived some benefit and should have been assessed.

The law shields the assessor from personal liability when he acts within his jurisdiction, at least when he acts in good faith and without malice.

Williams vs. Weaver, 75 N. Y. 30.

An *ordinance* of a city council may be in its *nature judicial* and binding on the community, but it may be

repealed or modified in any way not in conflict with the charter.

State vs. Morristown, 34 N. J. L. 451.

But it will not be contended that a "judicial" ordinance constitutes a final judgment in the sense contended for by counsel, nor that all questions which entered into passage of the ordinance are *res adjudicata.* The cases on this subject go no farther than to say that these tax proceedings are in their *nature* judicial or quasi judicial, and none of them go to the extent of holding that this judgment of valuation is to be treated judicially as an ordinary judgment except that at sometime before the actual final judgment is entered, notice must be extended to parties interested.

The cases manifest a clear distinction between the determination of valuation and the *final judgment entered.* If valuation was a conclusive step then notice would be necessary *before* the determination. By all authorities this is not required.

Pursuant to an act of the New York legislature the expense of grading a street was assessed by commissioners upon adjacent lands benefited. After the sums so assessed upon some of the lots had been paid, the court of appeals of the state adjudged the assessment void because the act made no provision for notice for a hearing of the land owners. The legislature then passed another act directing a sum equal to so much of the first assessment as had not been paid, adding a proportional part of the expense of making that assessment and interest, to be assessed upon and equitably apportioned among the lots upon which the former assessment had not been paid, first giving notice to all parties interested

to appear and be heard upon the question of the apportionment of this sum among these lots, but not as to any apportionment between them and those lots, upon which the former assessment had been paid. It was held that an assessment made under the latter statute was not a taking of property without due process of law.

> "The legislature imposed the unpaid portion of the cost and expense and the interest thereon upon that portion of the property benefitted, which has thus far borne none of the burden. In doing so it necessarily determined two things, viz.: the amount to be realized and the property specially benefited by the expenditure. * * * This action is not open to our review."
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> *Spencer vs. Merchant,* 125 U. S. 353.

> "The precise wrongs of which complaint is made appear to be that the land owners now assessed never had an opportunity to be heard as to the original apportionment and find themselves now practically bound by it as between their lots and those of the owners who paid. But this objection becomes a criticism upon the action of the legislature, and the process by which it determined the amount to be raised and the property to be assessed. * * * It may err, but the courts cannot review its discretion."
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> *Spencer vs. Merchant,* 100 N. Y. 589.

Just as the valuation fixed by an assessor this year may be superseded by that fixed next year, so a legislature cannot pass an act relative to assessment which may not be modified or repealed by a subsequent legislature.

Ex-parte Low, 24, W. Va. 622.

All that is decided by *State vs. Tunella,* 70 Miss. 701, relied upon by counsel, is: That an assessment for taxation can only be made by the officer designated by law; and when the constitution devolves this duty of assessing, upon a certain officer, the legislature cannot by statute substitute another.

The constitution of Mississippi provided for an assessor, and he is in that state a constitutional officer with his duties defined. The legislature attempted to confer his duties upon a state revenue agent, and the action of this latter officer was held to be void. In Minnesota, the constitution makes no provision whatever with reference to the officers who shall perform the duty of assessing and collecting the taxes and leaves the mode thereof entirely to the legislature.

Plaintiffs-in-error cite *Slaughter vs. Louisville,* 8 S. W. Rep. 917. The assessor of Louisville was by acts of legislature directed to assess certain real estate not previously assessed or which had been erroneously assessed, or upon which taxes had not been paid. The assessments in question were held to be invalid. First, because proper notice had not been given; second, the board of revision was never organized; third, the board was not appointed as prescribed by law, and did not hold its meetings as prescribed by law. A later act was passed attempting to legalize and validate an assessment levied under one of the earlier acts, but it was held that the assessment therein sought to be validated being void and not merely defective, could not be cured; that all the legislature could do was to provide for re-assessment and collection.

The authorities upon which the court there say that the assessor in determining valuation acts judicially,

cited page 920, are *Hager vs. Reclamation,* 111 U. S. 701, and *Cooley on Taxation.*

The argument of counsel proceeds on the erroneous assumption that the taxing power of the state is limited, whereas it is unlimited, except as restricted by the constitution. This year the legislature may impose a certain tax; next year it can increase the tax to any extent it deems necessary. Neither the amount nor the means by which the tax is assessed or collected can be questioned by the courts, so long as there is due process of law, and so long as the result is uniform and equal as required by the constitution. If the action of the assessor in determining the valuation constitutes a judgment, then the act of the assessor for the succeeding year results in a judgment, and on the theory advanced, the former judgment is not superseded by the latter judgment, for the question of valuation cannot be reopened.

If all the property in the state had been under-valued this year, the legislature would undoubtedly have the power, upon the question of under-valuation having been determined, to collect next year from the entire state taxes sufficient to meet the demands of the government upon the basis of the increased valuation, and would, we contend, have the power to re-assess upon all of the property in the state, the difference between the former valuation and the true valuation found. If the state has the power to tax uniformly in the first instance, why has it not the power to remedy and correct an unequal and non-uniform assessment?

The Supreme Court of Minnesota takes the ground that *gross undervaluation is equivalent to fraud.* And on the other hand:

> "This is not an attack upon the original assessment so as to have the amount then assessed, and taxes thereon levied and paid, declared void. To that extent the amount is recognized as legitimate and upheld. * * * That a re-assessment in certain cases is permissible, is settled beyond controversy." Cited Blackwell's Tax Titles, sec. 327.
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> *State vs. Weyerhaueser,* 68 Minn., 365.

The mere fact that the assessor had gone through a form of assessing a vast quantity of land, upon a basis found to be a gross under-valuation, does not operate as a judicial determination, so as to constitute a bar to any further proceedings or relief in the premises.

> "The law contemplates as a necessary and indispensable step in the process of taxation the honest exercise of the judgment of the assessing officers to the end that all taxable property may be assessed at its actual value and so equality of taxation secured so far as is reasonably practicable. If this requirement may be disregarded and the mere will, prejudice, favor or interest of the assessor and not the certain and uniform rule prescribed by the statute, is to be allowed to control his action, the people would be subject to the grossest wrong and the constitutional and statutory rule of equality of taxation would be of little avail."
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> *County vs. Batchelder,* 47 Minn. 512.

The under-valuation of the lands in controversy were found to be so gross that it cannot be accounted for upon any mere misjudgment of value and the courts are warranted in saying that it was a gross neglect, an intentional disregard of constitutional and statutory duty

upon the part of the taxing officers and upon no properly conceived theory is it a final judgment as against the taxing power, any more than it would be final as against any taxpayer who by reason of gross under-valuation on adjacent land had been assessed above what would be fair and uniform as to his own.

Gross neglect implies bad faith.

Louisville vs. Robinson, 4 Bush. 509.

McGraff vs. Hudson, 32 Barb. 144.

The act of 1893 "merely sets in motion new proceedings to collect the balance of the state's claim, and there is no constitutional objection in the way of doing this."

State vs. Weyerhaeuser, 68 *Minn.,* 368.

"The objection that the actual payment of the tax as originally assessed should preclude any further or additional assessment, does not go to the constitutionality of the act. The objection is not of serious import in any view of it. The reply of the Circuit Judge is complete in every aspect of the question. He said: 'The constitution and laws prescribed that all property should be assessed according to its value, and if, by the misfeasance, non-feasance or mistake of the assessor, it is not assessed according to its value, but upon an arbitrary basis fixed by the assessor at far less than its value, why should the tax debtor escape simply because he has made payment? * * * It may be that such a law will work inconvenience and annoyance to the citizen, but all tax laws are odious and vexatious. It is said the citizen ought to know when he is through with the tax gatherer. He will know when he has paid his taxes on his property according to its value. He will know then he is secure

against re-assessment, and the law will protect him.' "

Street vs. Morrow, 87 Tenn. 406.

Whenever the owner makes full payment according to a true valuation he is protected by the provisions of the state constitution requiring equality and uniformity of taxation. It is not necessary that the law should provide for a general re-valuation. The other property in the county has already been legally and properly assessed.

"If the re-valuation is in spots, as counsel claims, it is because these spots are tainted with intentional wrong-doing, or gross neglect, whereby a great number of these spots are found, covering an extensive territory grossly under-valued by the assessor; and, if the government cannot reach such injustice and wrong, it is a startling exhibition of its organic weakness. * * * We are not willing to yield to the doctrine that such a palpable intentional violation of law in tax proceedings, before the final judgment of the court, is beyond review. In raising the valuation of the defendants' property, it was placed at just the value at which it should have been fixed in the first place. There is no dispute about that fact. If there was difficulty in getting at the value of the property by reason of the necessity of going back several years in order to ascertain such value, that fact would not destroy the validity of the law. * * * *If the officer or person appointed by the governor to ascertain whether the assessor or other county officials have grossly under-valued certain property has made a mistake, or has been guilty or negligence or fraud, in re-assessing such property, the*

owner has an opportunity to be heard, and show such fact, and thus has a method of redress against every illegal assessment. * * * Individual hardship may sometimes be produced, as where lands have changed hands since the time when the tax should have been collected from it; but similar injustice in particular cases is incident to all taxation, and will not avoid such a re-assessment."

(Citing *Blackwell on Tax Titles,* sec. 951; *Tallman vs. City,* 17 Wis. 73.)

"The right to pass such curative laws grows out of the necessities of the government itself. If such laws can cure defective assessments where there has been an entire omission, there is no sound principle why they cannot cure a defect where it exists in part. It is not the individual owner who is compelled to answer for such omission, only as he pays for a re-assessment of his property; and, if he buys property which has unjustly escaped taxation, he takes the risk that the legislature may exercise its far-reaching power, limited only by the constitution. Property should not and cannot escape its just share of taxation by merely changing owners. * * * If the state fails once through the wrong of its officials, it may try again until it has accomplished its purpose. The under-valuation of the lands in question was a direct violation of the statutory law and the constitution. The re-assessment righted this wrong in justice to other taxpayers and the government."

State vs. Weyerhaeuser, 68 Minn., 370-372.

The constitutional questions brought here were all considered in the state Supreme Court and the alleged points of conflict with the Federal Constitution, if such

conflict exists, would exist with reference to the constitution of Minnesota, the provisions involved being practically identical.

State vs. Weyerhaeuser, 72 Minn., 519.

In the last case the Supreme Court of Minnesota say:

> "Real estate taxes assessed under this statute cannot be collected or enforced by distraint of goods, but can be collected or enforced only by proceedings in the nature of a civil action against the land, of which the owner has notice, which is 'due process of law' as applied to such proceedings, and in which *he may interpose by way of defense all objections to the tax which go to the merits of the proceedings;* also, that there is no distinction in principle between a case where land has wholly escaped taxation by reason of its omission from the assessment roll and one where, by reason of a fraudulent or grossly inadequate assessment, it has escaped a part of its just share of the public burdens."

Answering counsel's *first* proposition we maintain:

The act does not delegate judicial power to the Governor. His power extends merely to the appointing of a special assessor upon a proper showing or request. The Governor does not pass upon the question of valuation or of gross under-valuation. All that he does is to appoint a person, to make the investigation, and this person is the one to whom the legislature has delegated the power to determine the questions of gross under-valuation and true valuation.

See *Davidson vs. N. O.,* 96 U. S. 102.

Murray's Lessee, vs. Hoboken Land Co., 18 How 272.

R. R. Co. vs. Backus, 154 U. S. 425.

Counsel assert in their *third* proposition that the right to contest in the proceedings under the act of 1893 goes only to the extent of trying the issue of gross over-valuation.

But if the lands were in fact under-valued, then the owners have escaped payment of their just proportion of the public debt. If they could show upon the trial prior to the entry of judgment that the lands during the years in question were not under-valued, they have a complete defense. But the State Supreme Court has held that plaintiffs-in-error as a matter of fact and of law did have the right to try all questions involved in these tax proceedings, including the entire question of *valuation*. If the land owners have failed to present to the trial court all defenses available, they cannot be relieved here. They are bound by the record.

Nor is counsels' *fourth* proposition with reference to the doctrine of estoppel applicable.

Individual hardship will not be considered as affecting the validity of a tax imposed. The law in force at the time of the transfers in question provided for the imposition of a corrected assessment. Plaintiffs-in-error purchased the property subject to this liability imposed by the Legislature for the benefit of the public. The State as such cannot be looked upon as acting in any manner which would work an estoppel.

In conclusion we contend:

First: That Chapter 151 of the laws of 1893 affords plaintiffs-in-error due notice and opportunity to be heard in defense of all rights here in issue.

Second: The first assessor's valuation did not constitute a judgment fixing immunity from further taxation for the years 1888-1893.

Third: The act does not commit to the executive branch of the government power to set aside judgments and grant new trials the Governor's power going only to the extent of appointing a special assessor whose duty it is to make a re-assessment if he finds a re-assessment justified, the Governor's action being administrative.

Fourth: The doctrine of estoppel is not applicable.

For the reasons advanced, we submit that the judgment appealed from should be sustained.

Respectfully submitted,

W. B. DOUGLAS,
Attorney General for Minnesota.
Attorney for Defendant in error.

No. 128.

FEB 6 1900
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FREDERICK WEYERHAUESER and others,
Plaintiffs in Error,

AGAINST

THE STATE OF MINNESOTA,
Defendant in Error.

~~October Term, 1899.~~
~~No. 300.~~ 128.

Chapter 151 of the Statutes of Minnesota of 1893.

(The side-notes as well as the text are are copied from the statute books.)

"*An act to provide for the assessment of property which has been or which may hereafter be unlawfully omitted in the assessment of property in the county in which it is situated and for a reassessment where there has been a gross undervaluation of such property.*

Taxation of property undervalued or unlawfully omitted.

Be it enacted by the Legislature of the State of Minnesota:

Complaint to the governor as to unlisted or undervalued property.

SECTION 1. Whenever it shall be made to appear to the governor of this state by a complaint in writing and under oath or by the finding of any court, the legislature or any committee thereof, that for any reason any considerable amount of property in any county in this state has been or may hereafter be improperly omitted from the tax lists and assessment roll of any county for any year or years, or, if assessed, that the

same has been grossly undervalued by the assessor or other county officials, whether such valuation and assessment has or has not been reviewed or acted upon by the county board of equalization of any such county, he shall forthwith appoint in writing some competent citizen of this state, not a resident of such county, to ascertain the character, location, value and ownership of the real and personal property in any such county so omitted, underassessed or undervalued, who shall forthwith proceed to examine and report upon the subject and prepare a list or lists thereof in duplicate, showing therein the character, location, ownership and valuation of all such property, with the year or years for which the same or any part thereof has been omitted or undervalued; said list shall also show therein opposite each tract, piece or parcel of land or personal property undervalued or underassessed for any year or years thereupon in which the same was undervalued or underassessed, with the amount of such assessment, the actual and true value thereof at the time and for which the same was subject to and should have been assessed, together with the difference been the assessed and actual value thereof as so found. One of which duplicate reports or lists shall be by him filed with the county auditor of such county on or before the first day of January in the year in which any such assessment is to be made, and the other of said lists shall be by him filed with in the same time with the state auditor. All of said lists shall be verified substantially as follows:

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STATE OF MINNESOTA, }
County of..... } ss.

I,....., do solemnly swear (or affirm) that I have personally examined the real and personal property of the foregoing lists described, and that said list contains a correct and full list of all the

real and personal property subject to taxation so far as I have been able to ascertain the same, and that the character, location, ownership and valuation thereof as set down in the proper column, opposite the several kinds and pieces of property, are just and true to the best of my knowledge and belief.

Subscribed and sworn to before me this ..... day of ----------, ------

SEC. 2. The county auditor upon the receipt of any such list or lists shall enter the property therein described in the real and personal property assessment books as provided in section twenty-nine, chapter eleven, compiled statutes of 1878, and upon receiving the said books from the county auditor as in said section provided said assessor or assessors shall assess the property so entered by said auditors, from said lists, at its true value as shown by the lists aforesaid, copies of which lists shall be furnished the assessor, together with the assessment books of his district, and he shall also make the necessary corrections in any assessment in any roll therefor made so as to make such assessment to correspond with the true value of said property as so returned in the list furnished him, and correct his returns accordingly; and the county auditor shall proceed therein as provided by sections one hundred and twelve and one hundred and thirteen of chapter eleven of the general statutes of eighteen hundred and seventy-eight: Whenever the county auditor shall find from any such list that any property has been omitted from or undervalued in the tax lists or assessment rolls of any prior year or years, he shall forthwith enter the same on the assessment and tax books for the year or years in which the same was omitted or undervalued, and he shall assess such omitted and underassessed or undervalued property at the valuation and amounts so shown to have been omitted or undervalued and extend the arrearages of

Auditor to enter unlisted property in assessment books.

Assessment thereof by assessors.

taxes on such property accruing against the same, and such arrearages shall be extended against such property upon the tax list, for the current year, and collected as other taxes are by law collected.

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SEC. 3. The taxes upon all property named in any such list and found to have been omitted from or underassessed or undervalued in the tax list for any year or years shall be and become a lien upon all the real property owned in any such county by any person or corporation named in such list as the owner thereof, from the time, and whenever said list shall be delivered to the county auditor as provided by section one of this act, and shall be and remain a lien thereon until the same are paid, and may be satisfied out of the sale of any property in such county owned by any person or corporation so assessed.

SEC. 4. The person appointed as provided by section one of this act shall, when found to be necessary to enable him to properly perform the duties required of him by this act, within the time prescribed by law, deputize, with the approval of the governor, one or more well qualified citizens of this state to assist him in the performance of his duties, and the person or persons so selected or deputized shall perform such duties as shall be assigned them by the persons by whom they shall have been appointed; and the persons so deputized shall, before entering upon their duties, respectively take an oath to faithfully perform the duties required by the provisions of this act.

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SEC. 5. The person appointed by the governor as provided by section one of this act shall receive for his services three dollars per day, and each of his deputies two dollars per day for every day in which they are necessarily employed in the performance of their respective duties under this act, together with their necessary expenses while so employed, if such expenditure be found by the governor just.

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SEC. 6. The several amounts of such compensation and expenses shall be paid out of the general fund in the state treasury on the warrant of the state auditor

upon the approval of the governor. Any county within which the assessment of the property is made pursuant to the provisions of this act shall reimburse the state of Minnesota for the compensation and expense thus incurred two years after the making of the same, and the state auditor shall notify the auditor of such county of the amount thereof, whereupon it shall become the duty of such county auditor to levy a tax on the taxable property in this county sufficient to pay the same, and when such tax is collected the proceeds thereof shall be forthwith reported and paid into the state treasury in the same manner as other state taxes.

SEC. 7. Any assessor or county auditor who shall neglect or refuse to do or perform any of the duties required by this act shall be immediately suspended and removed from such office by the governor of this state and shall be deemed guilty of a misdemeanor, and in addition to the usual penalty shall be liable on his official bond for all taxes on any and all property named in any list provided for by this act.

Neglect of assessor or county auditor, penalty.

SEC. 8. This act shall take effect and be in force from and after its passage.

Approved April 14, 1893.

Provisions of the General Law referred to in Chapter 151 of 1893.

Section 29 Chapter 11, Statutes of 1878 (same as § 1537 Gen'l. Statutes of 1894) referred to in Section 2 of Chapter 151 of 1893 is as follows:

"The county auditor shall annually provide the necessary assessment books and blanks at the expense of the county, for and to correspond with each assessment district. He shall make out, in the real property assessment book, complete lists of all lands or lots subject to taxation, showing the names of the owners, if to him known, and, if unknown, so stated opposite each tract or lot, the number of acres, and the lots or

County Auditor to furnish books, etc.—List of real property.—Of mortgages—Meeting of assessors.

parts of lots or blocks, included in each description of property. The list of real property becoming subject to assessment and taxation every odd-numbered year may be appended to the personal property assessment book. There shall be appended to each personal property assessment book a list of all mortgages, or other real estate securities, held, owned or controlled by the residents of the town or district, showing the names of the owners or agents alphabetically arranged, and the amout due on each separate instrument. It is hereby made the duty of the register of deeds to make out such lists according to the records of his office, and deliver them to the county auditor on or before the last Saturday of April in each year. The expenses of such list shall be paid by the county, on allowance by the county commissioners. The assessment books and blanks shall be in readiness for delivery to the assessors on the last Saturday of April in each year, and the assessors shall meet on that day, at the office of the county auditor, for the purpose of receiving such books and blanks, and for conference with the auditor in reference to the performance of their duties."

Section 112, Chapter 11, Statutes of 1878 (same as § 1630 Gen'l Statutes of 1894) referred to in Section 2 Chapter 151 of 1893, is as follows :

Auditor to correct false lists returns.

"The county auditor, if he has reason to believe or is informed that any person has given to the assessor a false statement of his personal property, or that the assessor has not returned the full amount of all property required to be listed in his township or district, or has omitted or made an erroneous return of any property which is by law subject to taxation, shall proceed, at any time before the final settlement with the county treasurer, to correct the return of the assessor, and to charge the owners of such property on the tax lists with the proper amount of taxes; to enable him to do which he is hereby authorized and empowered to issue compulsory process, and to require the attendance of any person whom he may suppose to have a knowl-

edge of the articles or value of the property, and to examine such person on oath in relation to such statement or return ; and the auditor in all such cases shall notify every such person before making the entry on the tax list, that he may have an opportunity of showing that his statement or the return of the assessor is correct ; and the county auditor shall, in all cases, file in his office a statement of the facts or evidence upon which he made such corrections ; but he shall in no case reduce the amount returned by the assessor, without the written consent of the auditor of state, on a statement of the case submitted by the county auditor, or the party aggrieved."

Note : The power conferred by the above section was not exercised in this case, so that this section of the Statute is immaterial.

Section 113, Chapter 11, Statutes of 1878, amended in 1881 (same, amended, as § 1631 Gen'l Statutes of 1894) referred to in Section 2, Chapter 151 of 1893, is as follows :

Property omitted from assessment.—Uncollected taxes—Subsequent assessment.

" If any real or personal property shall be omitted in the assessment of any year or years, and the property shall thereby escape taxation, when such omission shall be discovered the county auditor shall enter such property on the assessment and tax-books for the year or years omitted, and he shall assess the same, and extend all arrearage of taxes properly accruing against said property, with seven per cent. interest thereon from the time said taxes would have become delinquent, and the same shall be extended against such property on the tax list for the current year. If any tax on any property liable to taxation is prevented from being collected for any year or years, by reason of any erroneous proceedings or other cause, the amount of such tax which such property should have paid shall

be added to the tax on such property for the current year."

Note: The power conferred by the above section was not exercised in this case, so that this section of the Statute is immaterial.

Provisions of the general law governing proceedings for collecting delinquent taxes, adopted by reference into Chapter 151 of 1893, Section 2, to be found in the General Statutes of 1894.

(The provisions of § 1588 are interpreted in the cases of Delinquent Taxes of St. Louis County, 78 North Western Reporter, 115 (1899) and State vs. Lakeside Land Company, 71 Minn, 283 (1898).

§ 1579. "On or before the twentieth day of January the county auditor shall file in the office of the clerk of the district court of the county, or, if it be attached for judicial purposes to some other county, then in the office of the clerk of such court in that county, a list of the delinquent taxes upon real estate within his county, which list shall contain a description of each piece or parcel of land on which such taxes shall be so delinquent, with the name of the owner, if known, and if unknown, so stated, appearing on the delinquent list, and the total amount of tax delinquent and penalty for each year opposite such description, and shall verify such list by his affidavit that the same is a correct list of taxes delinquent, for the year or years therein appearing, upon real estate in said county. The filing of such list shall have the force and effect of filing a complaint in an action by the county against each piece or parcel of land therein described, to enforce payment of the taxes and penalties therein appearing against it, and shall be deemed the institution of such action; and

the same shall operate as notice of the pendency of such action."

§ 1580. "The clerk shall, within fifteen days thereafter, make and deliver to the county auditor a copy of the list so filed, and attach thereto a notice, which may be substantially in the following form: Copy of list and notice for publication to be delivered to county auditor.

STATE OF MINNESOTA, } ss.: District Court,
County of----------, } ----Judicial District.

The State of Minnesota, to all persons, companies, or corporations who have or claim any estate, right, title, or interest in, claim to, or lien upon, any of the several pieces or parcels of land in the list hereto attached described:

The list of taxes and penalties on real property for the county of----------, remaining delinquent on the first Monday in January,-------, has been filed in the office of the clerk of the district court of the county of----------, of which that hereto attached is a copy. Therefore you, and each of you, are hereby required to file in the office of said clerk, on or before the twentieth day of March, 18----, your answer in writing, setting forth any objection or defense you may have to the taxes, or any part thereof, upon any piece or parcel of land described in said list, in, to, or on which you have or claim any estate, right, title, interest, claim, or lien, and in default thereof judgment will be entered against such piece or parcel of land for the taxes on said list appearing against it, and for all penalties, interest, and costs.

(signed) ----------
Clerk of the District Court of the County of----------

(Here insert list.)

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§ 1581. "The county auditor shall cause said notice and list to be published once in each of two consecutive weeks in some newspaper of general circulation, printed in the English language, and which has been regularly published for at least three months previously in the county in which said real estate is situate, if there be one, or in the county where the proceedings are instituted, or, if there be no such newspaper published in either county, then in some newspaper published within the judicial district, the first publication of which list shall be made within fifteen days after the delivery thereof to the auditor, as provided in the preceding section. The newspapers in which said publication shall be made shall be designated by resolution of the board of county commissioners of the county in which the taxes are levied, at their annual meeting in January, a copy of which resolution, certified by the county auditor, shall be filed in the office of the clerk of the court; *provided*, that if the county commissioners shall fail to designate such paper, then it shall be designated by the county auditor; *provided, further*, that the papers designated by the commissioners of the several counties in January, one thousand eight hundred and eighty-five, shall be entitled to publish the list of lands delinquent for taxes on the first Monday in January, one thousand eight hundred and eighty-six."

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§ 1582. "When the last publication shall have been made, the notice shall be deemed to have been served, and the court to have acquired full and complete jurisdiction to enforce against each piece or parcel of land in said published list described, the taxes, accrued penalties, and costs upon it then delinquent, so as to bind every estate, right, title, interest, claim, or lien, in law or equity, in, to, or on such piece or parcel of land, of every person, company, or corporation; and such jurisdiction shall not be in any way affected by any error in making the list filed with the clerk, nor by any error, irregularity, or omission in the assessment

or levy of the taxes, or in any other proceedings prior to filing the said list, nor by any mistake in copying the list for publication, nor by any mistake in publishing such list, nor by any mistake in the amount of tax in such published list appearing against any piece or parcel of land therein described; *provided*, that any judgment rendered in such proceedings shall be void upon satisfactory proof made at any time that such real estate was exempt from taxation, or that such taxes were paid before judgment was rendered."

Who may appear and answer.

§ 1584. "Any person, company, or corporation, having any estate, right, title, or interest in, or lien upon, any piece or parcel of land embraced in said list as published, may, on or before the twentieth day of March next after the last publication of said notice, file in the office of the said clerk an answer, verified as pleadings in civil actions, setting forth his defense or objection to the tax or penalty against such piece or parcel of land, which answer need not be in any particular form, but shall clearly refer to the piece or parcel of land intended and set forth, in ordinary and concise language, the facts constituting the defense or objection to such tax or penalty; and if the list shall embrace the taxes for two or more years, the defense or objections may be to the taxes or penalty for one or more such years. Such answer may embrace his defense or objections to any number of parcels of land embraced in said list as published, to which he has any estate, right, title, interest in or lien upon."

Proceedings when answer is filed.

§ 1586. "If answers shall be filed within the time hereinbefore prescribed as to the taxes or penalties upon any pieces or parcels of land embraced in said list as published, such answers shall stand for trial at any general term of the district court in the county where such proceedings are pending, in session at the time when the time to file answers as aforesaid shall expire, or at the next general or special term appointed to be held in said county; and if no general or special

term shall be appointed to be held within thirty days thereafter, then the same shall be brought to trial at any general term appointed to be held within the judicial district, upon ten days' notice. It shall be the duty of the county attorney of the county in which said taxes are levied, if there be one, and, if there be none, then of the county in which such proceedings are instituted, to take charge of and prosecute such proceedings; but the county commissioners of the county in which such taxes are levied may employ any other attorney to assist such county attorney therein. At the term at which such proceedings come on for trial, they shall take precedence of all other business before the court. The court shall proceed without delay, and summarily hear and determine the objections or defences made by the several answers, and shall dispose of all such answers, and direct judgment accordingly, at the same term and in the trial thereof shall disregard all technicalities and matters of form not affecting the substantial merits."

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§ 1588. If all the provisions of law in relation to the assessment and levy of taxes shall have been complied with, of which the list so filed with the clerk shall be *prima facie* evidence, then judgment shall be rendered for such taxes, and the penalties and costs. But no omission of any of the things by law provided in relation to such assessments and levy, or of anything required by any officer or officers to be done prior to the filing of the list with the clerk, shall be a defence or objection to the taxes appearing upon any piece or parcel of land, unless it be also made to appear to the court that such omission has resulted to the prejudice of the party objecting, and that the taxes against such piece or parcel of land have been partially, unfairly or unequally assessed; and in such case, but no other, the court may reduce the amount of taxes upon such piece or parcel, and give judgment accordingly. It shall always be a defence in such proceedings, when made to appear by answer and proofs, that the taxes

have been paid, or that the property is not subject to taxation."

Provision of the General Law relating to the case at Bar.

§ 1536. " All property shall be assessed at its true and full value in money. In determining the true and full value of real or personal property, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation; nor shall he adopt, as a criterion of value, the price for which the said property would sell at auction, or at a forced sale, or in the aggregate with all the property in the town or district; but he shall value each article or description of property by itself, and at such a sum or price as he believes the same to be fairly worth in money." Valuation of property.